

228/06

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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Ex Parte No. 706

*PETITION OF UNION PACIFIC RAILROAD COMPANY TO INSTITUTE RULEMAKING TO  
ADOPT REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL*

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**Reply of**

**The Fertilizer Institute**

The Fertilizer Institute ("TFI") hereby submits this Reply in response to a Petition dated October 13, 2010 by the Union Pacific Railroad Company ("UP"), requesting the Board to institute a rulemaking proceeding to adopt reporting requirements for positive train control ("PTC"). TFI believes that UP's Petition should be denied as premature and unnecessary.

TFI is the national trade association of the fertilizer industry. Many TFI members produce and/or consume anhydrous ammonia, which is one of the most widely used TIH commodities. Recent federal legislation requires the nation's railroads to implement PTC on main lines used to transport TIH commodities.<sup>1</sup> Anhydrous ammonia, which is frequently shipped by rail, provides essential nutrients to grow our nation's food supply and also has many industrial uses.

UP notes that, in Ex Parte 681, *Class I Railroad and Financial Reporting – Transportation of Hazardous Materials*, slip op. served January 5, 2009, the Board is "currently evaluating whether to pursue a rulemaking that would address how to classify separately the costs of hazardous materials operations and refine URCS to better capture the costs of transporting hazardous materials operations." UP Petition, p. 3, fn.1. UP argues that its current

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<sup>1</sup> See, Pub. L. No. 110-432, §104(a), 122 Stat. 4848, 4856-57 (2008) (codified at 49 U.S.C. 20157(a)(1)).

proposal is "narrower in scope." UP Petition, p. 3. But the Board's notice in Ex Parte 681 appears to encompass UP's current request, as the Board sought public comment on "whether and how [the Board] should improve its informational tools to better identify and attribute the costs" of TIH movement, including "revising the USOA [Uniform System of Accounts]". Ex Parte 681, slip op. at 2. Indeed, in its comments in Ex Parte 681, the Association of American Railroads, of which UP is a member, specifically discussed new PTC requirements under federal law and suggested changes to the Board's accounting and reporting requirements, including many of the very same accounting schedules that UP discusses in its October 13th Petition.<sup>2</sup> Thus, UP's Petition is duplicative and unnecessary.

Moreover, even if the UP's Petition were not encompassed by the Board's current proceeding, it would be premature. UP's petition asks the Board to decide how to change its accounting requirements, before the Board has decided in Ex Parte 681 whether to do so and to what uses the information is to be put. This appears to be putting the caboose before the locomotive.<sup>3</sup> UP argues that the nation's railroads will be spending "substantial amount of money to implement PTC," UP Petition, p. 3, but yet warns that information on expenditures for PTC-related financial and operating data could be lost if a rulemaking is not instituted, UP Petition, p. 6. Given the size and nature of these expenditures, UP's concern that this information will be lost or unavailable appears exaggerated.

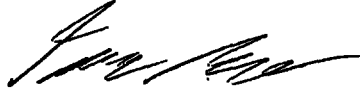
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<sup>2</sup> See, Comments of the Association of American Railroads, Ex Parte 681, submitted February 4, 2009, pp. 12, 13-14, and compare to UP Petition, p. 11.

<sup>3</sup> UP argues that the Board has previously adopted additional reporting requirements to keep apprised of significant issues affecting railroads and shippers, citing to the Board's decision in Ex Parte 661 (Sub-No. 1), dealing with information on rail fuel surcharges. UP Petition, p. 10. But the Board adopted those fuel surcharge reporting requirements only after it decided upon the need for the underlying information. See, Ex Parte 661, *Rail Fuel Surcharges*, decisions served August 3, 2006 and January 26, 2007.

The Board has only limited resources. It has recently begun several major regulatory initiatives,<sup>4</sup> and appears that others are likely.<sup>5</sup> Particularly given the pendency of Ex Parte 681, TFI believes that the UP's Petition should be denied as unnecessary, redundant and premature.

Respectfully submitted,



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November 2, 2010

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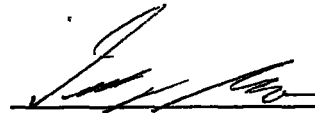
<sup>4</sup> See, e.g., Ex Parte 698, *Establishment of the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee*, served August 10, 2010; Ex Parte 699, *Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board*, served September 2, 2010; Ex Parte No. 704, *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*, served October 21, 2010, corrected decision served October 25, 2010.

<sup>5</sup> See, Testimony of Daniel R. Elliott III, Chairman, Surface Transportation Board, before the Senate Committee on Commerce, Science and Transportation, September 15, 2010, pp. 3-4.

# **CERTIFICATE OF SERVICE**

I hereby certify that I have served on this 2nd day of November, 2010, a copy of the foregoing "Reply of The Fertilizer Institute" by first-class mail on:

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